

April 5, 2007

Chairman Kevin Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re:   *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT  
Docket No. 06-150***

Dear Chairman Martin:

On behalf of CTIA – The Wireless Association® (“CTIA”), I am writing this letter to highlight concerns and voice our opposition to the recently received Frontline proposal. After years of work to reallocate the 700 MHz spectrum from broadcast use to both Public Safety and commercial use,<sup>1</sup> the Commission has in front of it, once again, another late filed proposal to reallocate a significant portion of the spectrum away from commercial use. The wireless industry is working hard to provide a competitive alternative to the two existing broadband platforms. Recently released Commission data highlights that consumers are beginning to turn to wireless broadband in large numbers. As several of you have said recently, we – both the industry and the Commission – have the opportunity to bring to the broadband environment what wireless has already brought to consumers: innovation, lower prices, and mobility. An absolute requirement to making that opportunity a reality is that the Commission move forward with its announced plans to complete auction of all 60 MHz of the commercial 700 MHz spectrum in a timely manner, consistent with the requirements of the DTV Act.<sup>2</sup> The industry is not asking that the spectrum be given to it for free, or that the service rules be designed such that only one participant will be interested in bidding. Instead, it seeks the right to compete at an open auction to pay a large amount of money to the United States Treasury so that it can continue the broadband evolution.

In order to move forward, the Commission should deny the Frontline Wireless, LLC (“Frontline”) proposal. The Frontline plan suffers from many of the

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<sup>1</sup> The FCC first adopted service rules governing the 700 MHz band in 2001. See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Memorandum Opinion and Order*, 17 FCC Rcd 11613 (2002) (“*Lower 700 MHz MO&O*”). Congress later provided its vision for the band in 2005. See Deficit Reduction Act of 2005, Pub. L. No. 109-171 (February 18, 2006) (“DTV Act”).

<sup>2</sup> DTV Act, § 3003.

fundamental flaws that plague the Cyren Call petition. Under the Frontline plan, the Commission is being asked in an unrealistic timeframe to review a very intricate proposal. CTIA is concerned that issues involving the legality of the proposal; Frontline's desire to have the Commission revert back to "command and control" assignment of spectrum; questions about Frontline's business model and whether it has any chance for success; questions regarding needed and continuous Commission oversight over such a proposal; timing of the submission of the proposal and the Commission statutory obligations; the likelihood that one or more parties will challenge the outcome of any Commission formal consideration, resulting in likely court action and a litigation "cloud" over the spectrum as it goes to auction; and other significant issues will taint not only the proposed "E Block," but also will affect the rest of the auction, impacting small, medium, and large companies wishing to purchase spectrum at auction.

This needless uncertainty, ultimately designed by Frontline to benefit Frontline, a for-profit company that wishes to profit at the expense of the rest of the auction participants, can and should be avoided. The recently-completed AWS auction, where carriers were able to purchase additional spectrum to continue their broadband deployment efforts, and where three new nationwide licensees effectively were created,<sup>3</sup> should be used as a model for this auction. For the Commission to differ fundamentally from what many of you have called the most successful auction ever concerns CTIA.

Unlike CTIA's proposal to bring to Public Safety the benefits of commercial operations, this Frontline plan, like Cyren Call before it, requires use of spectrum allocated to Public Safety for commercial purposes likely in contravention of Section 337 of the Communications Act. While Frontline touts the potential benefits of providing an additional 10 MHz of spectrum to Public Safety, the offer is conditioned on providing Frontline – a commercial entity – exclusive access to lease 12 MHz of Public Safety spectrum.<sup>4</sup> But Section 337, and Commission precedent, prohibit such an arrangement. Section 337(a)(1) of the Communications Act provides that 24 MHz of spectrum between 746 MHz and 806 MHz shall be allocated "for public safety services."<sup>5</sup> The statute goes on to define "public safety services" as "services-- (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided-- (i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose

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<sup>3</sup> CTIA refers to the AWS licenses obtained by Leap Wireless, MetroPCS and SpectrumCo.

<sup>4</sup> Comments of Frontline Wireless, LLC, PS Docket No. 06-229 & WT Docket No. 96-86 (filed Feb. 26, 2007) at i.

<sup>5</sup> 47 U.S.C. § 337(a)(1).

primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.”<sup>6</sup>

Were the statutory language ambiguous – which it is not – the Commission has clarified that it, indeed, means what it says. In the 700 MHz Public Safety Service Rules proceeding, the Commission found that “[b]ecause the statute defines the public safety *services*, and not the *entities*, for which the spectrum is allocated,” the relevant question is what services are being offered, rather than who is offering them.<sup>7</sup> The Frontline proposal contemplates a commercial entity using a portion of the 700 MHz Public Safety allocation for commercial services, which the statute expressly forbids. With respect to leasing, the Commission has determined that “public safety licensees” in the 24 MHz Public Safety band are permitted to “lease their spectrum usage rights to other public safety entities and entities providing communications in support of public safety operations.”<sup>8</sup> However, the Commission has never allowed Public Safety entities to lease spectrum allocated for their use for commercial purposes.<sup>9</sup> If the statute does not permit commercial leasing by *Public Safety entities*, certainly it does not permit a *commercial entity* like Frontline to lease Public Safety spectrum for commercial use.

Even if the statute permitted the Commission to implement the Frontline proposal, it would be unwise as a matter of policy to do so. Frontline’s proposal asks the FCC to reverse recent Commission efforts to move to flexible service rules, as well as to jeopardize auction proceeds already earmarked for worthy projects – including Public Safety interoperability – in favor of promised benefits of the Frontline proposal that may never be realized because of a questionable business plan. In response to the 9/11 Commission’s call for effective, interoperable communications, the DTV Act earmarked \$1 billion in 700 MHz auction proceeds for interoperable equipment grants.<sup>10</sup> Interoperability funding at this level is made possible by an accompanying requirement that the FCC auction 60 MHz of spectrum

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<sup>6</sup> 47 U.S.C. § 337(f)(1).

<sup>7</sup> *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through 2010*, First Report and Order, 14 FCC Rcd 152 ¶ 72 (1998) (emphasis added).

<sup>8</sup> *Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, 19 FCC Rcd 17503 ¶ 52 (2004) (“Secondary Markets Second R&O”).

<sup>9</sup> *See id.* (the Commission “decline[d] . . . at this time to permit public safety licensees to enter into spectrum leasing arrangements *for commercial or other non-public safety operations.*”) (emphasis added).

<sup>10</sup> DTV Act, § 3006.

for commercial use.<sup>11</sup> Congress has designated all of the proceeds from these auctions to various public interest purposes including, in addition to the \$1.5 billion for analog-to-digital converter boxes and \$1 billion for interoperability funding already mentioned, \$156 million for a national alert and tsunami warning system<sup>12</sup> and \$43.5 million to advance implementation of E911 service.<sup>13</sup> The remaining auction proceeds are earmarked for deficit reduction.<sup>14</sup>

In estimating – and earmarking – the proceeds of the 700 MHz auction, Congress assumed that the spectrum would be made available in a minimally restricted fashion that would enable it to migrate to its highest and best use. The Frontline proposal undermines that assumption by maintaining an auction requirement, but conditioning the license grant through an unprecedented “command and control” process in a manner that favors a single entity, so as to significantly de-value the spectrum.

Frontline’s proposal contains a laundry list of license conditions that will require the Commission both to revert back to unprecedented “command and control” spectrum assignment as well as to act in an ongoing oversight role over use of the spectrum. Chief among these conditions are that E block licensee will “give public safety on-demand access to a swath of broadband spectrum with no build-out expense”<sup>15</sup> while “accept[ing] the legal obligation to build out to specific milestones a nationwide broadband network that meets public safety requirements for interoperability, security and robust platforms.”<sup>16</sup> Further, the E block license would be allocated “for IP-based, open access architecture, ensuring that public safety agencies can use *any* equipment they choose subject to a minimum, ‘do-no-harm’ requirement.”<sup>17</sup> This same open access approach would support roaming and allow “consumers freedom to connect devices of their choosing.” Finally, the proposal suggests that the spectrum cannot be used for the provision of retail services, only for wholesale.<sup>18</sup>

The combination of conditions proposed by Frontline render the prospects for business success so unlikely as to not only de-value the spectrum but also reduce the

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<sup>11</sup> See 47 U.S.C. § 337(a).

<sup>12</sup> DTV Act, § 3010.

<sup>13</sup> *Id.*, § 3011.

<sup>14</sup> *Id.*, § 3004.

<sup>15</sup> Comments of Frontline Wireless, LLC, PS Docket No. 06-229 & WT Docket No. 96-86 (filed Feb. 26, 2007) at i.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at ii.

likelihood the public will ever enjoy any of the promised public interest benefits. Commercial lessees – the chief source of funding for Frontline’s operations – would be in competition with existing CMRS providers, but would have no guarantee that they ever could use the spectrum, as it would be subject to full preemption by Public Safety at any time. As an entrant in a competitive market, these lessees would be burdened by the obligation to build out a network not to commercial specifications, but to Public Safety specifications of coverage, capacity, ruggedness and survivability – all of which would increase their costs relative to their competitors. As stated above, at any time, the services would be subject to Public Safety preemption, decreasing the desirability of the offering to consumers. Moreover, supporting the open access model of open roaming for any equipment, while admittedly novel, is untried and will require the development of new capabilities, and will bring with it the risks and costs attendant on the development and deployment of any new technology. This also would increase the lessees’ costs relative to competitors not operating under similar regulatory burdens. All the while, the Commission must act in an oversight role. The difficulty of operating profitably under Frontline’s proposed condition can be expected to suppress or eliminate competing auction bidders, resulting in award of the spectrum to Frontline for a nominal amount or, in the event no competing bidders materialize, for free. Should the enterprise fail, the costs to the Commission of recapturing the license would include not only the lost auction proceeds but the lost opportunity costs of having this valuable spectrum in use for the public benefit.

Further, this proposal is premised (or perhaps not premised) on the notion that Public Safety needs access to additional spectrum. CTIA has argued multiple times in this proceeding that with the 24 MHz of spectrum allocated to Public Safety as part of the DTV transition, the amount of spectrum for Public Safety operation will effectively double, not counting the 50 MHz of spectrum at 4.9 GHz. Prior to reallocating additional spectrum to Public Safety uses, the Commission should move forward with the current allocations for both commercial and Public Safety use, and if necessary, revisit Public Safety needs. It is important to note that if Frontline’s proposal is to have any chance of being successful, a key requirement must be that Public Safety not only does not need access to the 10 MHz E block, but also it does not need access to a significant portion of the 12 MHz already earmarked for Public Safety.

Finally, it is unclear how a resolution of the issues raised by the Frontline proposal could occur in time for an auction that some of you have suggested should begin in the fall. As a general proposition, and to ensure adequate lead time for applicants to obtain financing, the Commission has sought to afford a six month time frame from the adoption of auction rules to the start of an auction. This is simply not possible under any realistic schedule for considering the late-filed Frontline proposal. Given Administrative Procedure Act notice and comment obligations and the time required for the Commission to review the record, write an order, not to mention

potentially address any reconsideration or appeal of the order, the proposal was fatally late at the time of submission.<sup>19</sup>

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For the foregoing reasons, CTIA respectfully requests that the Commission dismiss the Frontline proposal and continue the important and good work of the Bureau addressing outstanding issues requiring near term resolution in order to commence the 700 MHz auction in a timely manner.

Sincerely,

A handwritten signature in black ink that reads "Steve Largent". The signature is written in a cursive, flowing style.

Steve Largent  
President and CEO  
CTIA – The Wireless Association®

cc: Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert McDowell

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<sup>19</sup> Adoption of the Frontline proposal would require a rulemaking and, at present, no such rulemaking is underway. A routine, non-controversial Commission rulemaking can take six months from NPRM to Report & Order. In addition, as a rule of thumb, the Commission endeavors to adopt final rules well in advance of an auction, usually six months. Accordingly, if the Commission were to issue a Frontline NPRM tomorrow, the 700 MHz auction would, in the ordinary course, be delayed until April 2008. But the Frontline proposal is anything but ordinary or non-controversial, and will face significant opposition.